

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 1:21-cv-06752-PKC

-----x
STEVEN A. CUCULICH, as Trustee of
Inter Vivos Tr II FBO The Cuculich Family,

Plaintiff,

v.

JOHN Z. RIGOS,

Defendant.

-----x

**DECLARATION OF EDWARD G. BAILEY
ON BEHALF OF NONPARTY WITNESS ROCCO DISPIRITO**

EDWARD G. BAILEY hereby declares pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct:

1. I am a member of Bailey Law, P.C., the newly-retained attorneys for nonparty witness Rocco DiSpirito in the above-captioned action and respectfully submit this Declaration on Mr. DiSpirito's behalf pursuant to the Court's Order to Show Cause, dated September 26, 2022 (Doc. No. 52).

2. In short, I have attempted to resolve the Letter Motion by offering up Mr. DiSpirito for deposition on dates certain (October 19 and November 7) (see email chains annexed hereto); I have not heard back as of yet, necessitating this filing.

3. Further, as the annexed email chains make clear, I am at a loss to understand how the subject Subpoena was simply ignored by the prior counsel to whom the Letter Motion was directed. Clearly, there was confusion and miscommunication. Mr. DiSpirito has at all times been ready, willing, and able to sit for this deposition; he only wanted to be advised and

counseled. In view of the foregoing, therefore, no harm should be visited upon Mr. DiSpirito and the matter should simply be set down for the deposition pursuant to the subject Subpoena.

Dated: Syosset, New York
October 7, 2022



EDWARD G. BAILEY

Attorney Edward G. Bailey's declaration at ECF No. 55 resolves the Court's September 26, 2022 Order to Show Cause, and moots Plaintiff's letter-motion (ECF No. 46) to compel non-party Rocco DiSpirito's appearance for a deposition. By **November 14, 2022**, Plaintiff shall file a letter regarding the status of Mr. Dispirito's deposition.

Plaintiff is directed to promptly serve a copy of this Order on Mr. Bailey, and to file proof of service on the docket.

The Clerk of Court is respectfully directed to close ECF No. 46.

SO ORDERED 10/11/2022



SARAH L. CAVE
United States Magistrate Judge

Edward Bailey

From: Edward Bailey
Sent: Friday, October 7, 2022 4:22 PM
To: John Bradham; Peter Katzman; massimo.dangelo@akerman.com; karam@dahiya.law
Cc: robert.chester@akerman.com; gmorici@moricilaw.com; gregory.wong@akerman.com
Subject: RE: Cuculich/Rigos

Will we have a response on this before today's deadline for me to file something?

Edward G. Bailey
Bailey Law, P.C.
485 Underhill Blvd, Suite 308
Syosset, New York 11791
T – (516) 864-2100
(Pronouns: He/Him/His)

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From: Edward Bailey
Sent: Friday, October 7, 2022 2:53 PM
To: John Bradham <jbradham@msbllp.com>; Peter Katzman <pkatzman@msbllp.com>; massimo.dangelo@akerman.com; karam@dahiya.law
Cc: robert.chester@akerman.com; gmorici@moricilaw.com; gregory.wong@akerman.com
Subject: RE: Cuculich/Rigos

Mr. Bradham, I offer Mr. DiSpirito for deposition on 10/19 or 11/7, as firm, committed dates. Please advise. Ed

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From: John Bradham <jbradham@msbllp.com>
Sent: Friday, October 7, 2022 10:42 AM
To: Edward Bailey <ebailey@baileylawnyc.com>; Peter Katzman <pkatzman@msbllp.com>;

massimo.dangelo@akerman.com; karam@dahiya.law

Cc: robert.chester@akerman.com; gmorici@moricilaw.com; gregory.wong@akerman.com

Subject: Re: Cuculich/Rigos

Mr. Bailey - Your contentions are plainly frivolous as explained by Mr. Katzman's 9/28 email. Moreover, we obviously have the right and obligation to provide notice of this matter to potential counsel for Mr. DiSpirito. In fact, your own actions belie your protestations as you now represent that you will represent Mr. DiSpirito in this matter.

As far as our letter motion, we would only consider withdrawing it if Mr. DiSpirito's deposition is agreed to in writing and a date firmly set. We will not withdraw it based on your vague representations, particularly given Mr. DiSpirito's prior noncompliance and elusiveness, and your ever changing position on whether you represent him or not.

John M. Bradham

Morea Schwartz Bradham Friedman & Brown LLP

444 Madison Avenue, 4th FL

New York, NY 10022

Direct: (212) 599.3002

Cell: (917) 538.0898

General: (212) 695.8050

jbradham@msbllp.com



MOREA SCHWARTZ BRADHAM FRIEDMAN & BROWN LLP

From: Edward Bailey <ebailey@baileylawnyc.com>

Date: Thursday, October 6, 2022 at 1:25 PM

To: Peter Katzman <pkatzman@msbllp.com>, massimo.dangelo@akerman.com

<massimo.dangelo@akerman.com>, karam@dahiya.law <karam@dahiya.law>, John Bradham

<jbradham@msbllp.com>

Cc: robert.chester@akerman.com <robert.chester@akerman.com>, gmorici@moricilaw.com

<gmorici@moricilaw.com>, gregory.wong@akerman.com <gregory.wong@akerman.com>,

robert.chester@akerman.com <robert.chester@akerman.com>

Subject: RE: Cuculich/Rigos

Mr. Katzman: Thank you for at least clarifying in Document 54 that I represent Mr. DiSpirito in an unrelated landlord-tenant case in a different court and not in your case (though that filing does not cure Document 49 and your email does not satisfactorily explain why you are serving me at all in this case or why you placed me in the Judge's crosshairs). In short, you had no right to file either Document 49 or Document 54.

I prefer not to bring any of the foregoing before the Court along with what is, in my view, Akerman's failure to represent its client appropriately as regards the Subpoena. To avoid this, I propose to enter an appearance on behalf of Mr. DiSpirito in your case and offer him up for deposition on a mutually agreeable date. In turn, you withdraw your letter motion and all requests for contempt, sanctions, etc., and inform the Court that the matter has been resolved. Please may I have your thoughts. ED

Edward G. Bailey

Bailey Law, P.C.

485 Underhill Blvd, Suite 308

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(Pronouns: He/Him/His)

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From: Peter Katzman <pkatzman@msbllp.com>
Sent: Wednesday, September 28, 2022 5:29 PM
To: massimo.dangelo@akerman.com; karam@dahiya.law; Edward Bailey <ebailey@baileylawnyc.com>; John Bradham <jbradham@msbllp.com>
Cc: robert.chester@akerman.com; gmorici@moricilaw.com; gregory.wong@akerman.com; robert.chester@akerman.com
Subject: Re: Cuculich/Rigos

Mr. Bailey:

On September 2, 2022, you were cc'd on an e-mail to me from Robert Chester of Akerman, where Mr. Chester stated that Rocco DiSpirito is represented by you as new counsel. Based on that e-mail, I promptly emailed you a copy of our August 31, 2022 letter motion to compel against Rocco and the September 2, 2022 Court Order re: same. As required by the Court Order, we filed an affirmation of service that same day. In that affirmation, we state that we e-mailed those documents to you as "Attorney for Rocco DiSpirito". Our description was based on the foregoing representation from Akerman, which you did not respond to until five days later on September 7, 2022. In your response, you confirmed that you are in fact Rocco DiSpirito's attorney in a landlord/tenant matter in Civil Court, but stated that "As of this writing, I do not represent him in your case."

In our September 27th affirmation of service with respect to the Order to Show Cause, we therefore state that you are Rocco DiSpirito's attorney "in a landlord/tenant dispute in Civil Court of the City of New York, New York County."

Now, on September 28th, you are taking issue with the September 2nd affirmation of service.

For the foregoing reasons, your contentions are inaccurate and unreasonable.

Peter B. Katzman

Morea Schwartz Bradham Friedman & Brown LLP

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From: massimo.dangelo@akerman.com <massimo.dangelo@akerman.com>
Sent: Wednesday, September 28, 2022 3:05 PM
To: karam@dahiya.law <karam@dahiya.law>; ebailey@baileylawnyc.com <ebailey@baileylawnyc.com>; Peter Katzman <pkatzman@msbllp.com>; John Bradham <jbradham@msbllp.com>
Cc: robert.chester@akerman.com <robert.chester@akerman.com>; gmorici@moricilaw.com <gmorici@moricilaw.com>; gregory.wong@akerman.com <gregory.wong@akerman.com>; robert.chester@akerman.com <robert.chester@akerman.com>
Subject: RE: Cuculich/Rigos

That's false, Mr. Bailey, as we certainly don't represent Mr. DiSpirito or his wife in any capacity whatsoever.
Please be guided accordingly.
Thank you.

Massimo F. D'Angelo

Partner

Akerman LLP | 1251 Avenue of the Americas, 37th Floor | New York, NY 10020

T: 212 880 3800 | C: 732 232 1617

massimo.dangelo@akerman.com

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From: Karamvir Dahiya <karam@dahiya.law>
Sent: Wednesday, September 28, 2022 2:57 PM
To: Edward Bailey <ebailey@baileylawnyc.com>; Peter Katzman <pkatzman@msbllp.com>; John Bradham <jbradham@msbllp.com>
Cc: D'Angelo, Massimo (Ptnr-NY) <massimo.dangelo@akerman.com>; Chester, Robert (Assoc-NY) <robert.chester@akerman.com>; gmorici@moricilaw.com; Wong, Gregory (Assoc-NY) <gregory.wong@akerman.com>
Subject: Re: Cuculich/Rigos

[External to Akerman]

Mr. Katzman, I have said many times by now, I am not your post office. It was very presumptive on your part to have Hon. Judge's order delivered to me, when the respected Judge has not directed service upon me. Take me out of this service melee.

KD

On 9/28/2022 2:29 PM, Edward Bailey wrote:

Mr. Katzman: Document 49 filed by you misleads the Court into believing that you served me with the Letter Motion as the "Attorney for Rocco DiSpirito" (*id.*). On that basis, the Court's Order to Show Cause reads as though I am guilty of a failure to respond and am exposed to sanctions. As you know from my email to you dated September 7, 2022, "Hello Peter, thank you for forwarding these materials. I represent Mr. DiSpirito and his wife in a landlord-tenant case in Civil Court, New York County. Having reviewed the attachments, I see that Rocco is under subpoena, in contempt, facing a motion, with three (3) unreturned emails you sent, in other words, not exactly a situation I relish jumping into the middle of. As of this writing, I do not represent him in your case. Ed." I do not represent Mr. DiSpirito in connection with this action or the subject Subpoena. Indeed your letter motion made crystal clear that Akerman LLP represents Mr. DiSpirito in the *Rigos* litigation. Please remove/amend Document 49 or I shall be compelled to do so.

Edward G. Bailey
Bailey Law, P.C.
485 Underhill Boulevard
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Phone: (516) 864-2100
(Pronouns: He/Him/His)

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From: Peter Katzman <pkatzman@msbllp.com>
Sent: Tuesday, September 27, 2022 6:24 PM
To: Karamvir Dahiya <karam@dahiya.law>; John Bradham <jbradham@msbllp.com>
Cc: Edward Bailey <ebailey@baileylawnyc.com>
Subject: Re: Cuculich/Rigos

Perhaps this will clear it up. Attached is the bankruptcy petition that both you and Rocco DiSpirito signed and filed with the Court. Our client is Inter Vivos Tr II FBO The Cuculich Family, who is listed on the petition as the largest unsecured creditor of your client FlavorworksTrust LLC. So clearly you know who Rocco is, who our client is and what our dispute is about.

Peter B. Katzman
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From: Karamvir Dahiya <karam@dahiya.law>
Sent: Tuesday, September 27, 2022 6:11 PM
To: John Bradham <jbradham@msblp.com>
Cc: Peter Katzman <pkatzman@msblp.com>; ebailey@baileylawnyc.com <ebailey@baileylawnyc.com>
Subject: Re: Cuculich/Rigos

I still don't get it. What do I have to do with this? And or my client?

Karamvir Dahiya
Dahiya Law Offices LLC
75 Maiden Lane Suite 606
New York New York 10038
Tel: 212 766 8000
Cell: 646 420 9000

On Sep 27, 2022, at 5:40 PM, John Bradham <jbradham@msblp.com> wrote:

We sent it to you out of courtesy since you represent Flavorworkstruck LLC (Rocco Dispirito's entity) in bankruptcy and we are unable to find anyone who admits to representing him personally in this matter. You are obviously free to do with it as you wish. Hopefully you "get it" now.

John M. Bradham
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MOREA SCHWARTZ BRADHAM FRIEDMAN & BROWN LLP

From: Karamvir Dahiya <karam@bankruptcypundit.com>
Date: Tuesday, September 27, 2022 at 5:17 PM
To: Peter Katzman <pkatzman@msbllp.com>, ebailey@baileylawnyc.com
<ebailey@baileylawnyc.com>
Cc: John Bradham <jbradham@msbllp.com>
Subject: Re: Cuculich/Rigos

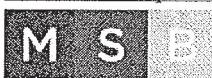
I do not understand this. I do not see judge directing service on me. Where do you get me serving Rocco DiSpirito? He is not even my client. I do not get it.

On 9/27/2022 5:10 PM, Peter Katzman wrote:

Attached please find an Order to Show Cause from the U.S. District Court for the Southern District of New York. Please provide a copy of the attached to Rocco DiSpirito. Thanks.

Peter B. Katzman

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Regards,

Karamvir Dahiya

--

DAHIYA LAW OFFICES LLC
Attorneys
75 Maiden Lane Suite 606
New York, New York 10038
Tel: 212-766 8000 Cell: 646 420 9000
karam@dahiya.law

Regards,

Karamvir Dahiya

--

DAHIYA LAW OFFICES LLC
Attorneys
75 Maiden Lane Suite 606
New York, New York 10038

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties of record in this action.



EDWARD G. BAILEY